



COMMUNITY DEVELOPMENT DEPARTMENT

Planning, Zoning and Building Safety

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Carlos De La Torre, P.E., Director

MEMORANDUM

TO: Board of Supervisors
Through: Michael Ortega, County Administrator

FROM: Michael Turisk, Planning Manager 
For: Carlos De La Torre, P.E., Community Development Director

SUBJECT: Docket R-12-01 -- (Proposed Zoning Regulation Amendments – Accessory Living Quarters)

DATE: May 10, 2012, for the May 22, 2012 Board Meeting

PROPOSED ZONING REGULATION AMENDMENTS: ACCESSORY LIVING QUARTERS

The Board of Supervisors will consider proposed amendments to Articles 2 and 17 of the Cochise County Zoning Regulations regarding our definition, requirements and standards for Accessory Living Quarters (ALQs).

I. Background

Accessory Living Quarters are a viable and increasingly popular approach for creating alternative housing options for the elderly and disabled. Demographics suggest a shift towards an overall older population; this will likely result in a growing need and demand for smaller and more affordable housing which provides convenient accommodation for those elderly and disabled who are eager to maintain or gain a measure of independence, but at the same time enjoy a sense of security by living close to family, friends or caregivers.

II. Cochise County's ALQ Standards and Process

Cochise County recognizes the benefits this type of alternative housing provides by permitting ALQ development in our Zoning Regulations.

However, there are distinct requirements and restrictions which are intended to ensure this type of development is incidental in nature and subordinate to principal structures in order to prevent overcrowding and maintain the character of single-family residential areas.

The County's ALQ requirements are as follows:

- ✓ The maximum square footage permitted for ALQs is 850 square feet, or no more than 70% of the size of the principal dwelling;
- ✓ Prohibits separate addresses or utility meters and rental separately from the main residence;
- ✓ Prohibits commercial uses other than approved home occupations; and
- ✓ Prohibits the use of recreational vehicles (other than park models) as ALQs.

Also, in order to obtain a permit for an ALQ, the structure must:

- ✓ Be on a property with an existing home;
- ✓ Meet all site development standards, such as minimum setbacks; and
- ✓ Be zoned RU, or R-36, or SM-36, 87, 174, 10-acres, 18-acres or 36-acres, or SR-43, 87, 174, 10-acres, 18-acres or 36-acres.

Written notification of neighboring property owners within 300-feet of the subject property is a required component of the ALQ application process. Neighbors are provided 15 calendar days to file written protest and a permit may be issued if no protests are received. However, if only one protest is received, the application may be submitted to the Planning and Zoning Commission for a decision in the same manner as is used for a Special Use Permit application. In addition, proposed ALQs which exceed the maximum permitted square footage may be submitted to the Planning and Zoning Commission as a Special Use Permit application.

Upon approval, the applicant signs and staff records a notice prior to permit issuance that specifically identifies the location of the property, indicates that the structure is an ALQ, and states that the property owner or tenant has agreed to comply with all applicable County Zoning Regulations. ALQ permits run with the property and may include a kitchen facility allowing residents to enjoy the full suite of amenities permitted in the primary dwelling, easing the transition to a new living situation for those with unique housing needs and provides for as much self-sufficiency as possible.

Cochise County receives relatively few ALQ applications annually, although, again, the number of applications is anticipated to increase if demographic suggestions hold true.

III. Balancing Community Goals with ALQ Development

While many property owners embrace the option of providing an aging or disabled relative or friend a safe and convenient place during a transitional phase, when this need passes, ALQs may transition to permanent, standard long-term rental situations. ALQ development may generate community-wide anxiety over time, as concerns typically arise from the perceived impacts on property values, housing densities, neighborhood appearance and character, and parking and traffic.

Size limitations, for example, are powerful mechanisms to ensure that ALQs remain subordinate to the principal structure or use, community character is maintained, and negative impacts, such as overcrowding, are minimized. ALQ size restrictions become increasingly important on small lots in order to prevent overcrowding.

For example, in Cochise County, a 20-acre property zoned RU-4 (one home per four acres) may have up to five homes built on the site, so it makes more sense for that particular property owner to build a standard second home for an elderly or disabled person because the structure would not be subject to ALQ restrictions. However, a one-acre property zoned R-36 (one home per 36,000 sq.-ft.) would be required to obtain an ALQ permit, and thus be subject to associated development restrictions. Maximum size restrictions also effectively limit the number of residents, which in turn reduces the need for additional parking and services.

The challenge lies in striking a balance between the recognized need for and benefits of this type of development, and the need to preserve community character, integrity and quality of life for communities in which they are permitted.

Currently, Cochise County prohibits standard long-term rental of ALQs post-need, but permits them as guesthouses for short-term stays. Permitting standard long-term rental has the potential to alter the complexion or character of communities over time. In essence, what may result is the unintended consequence of encouraging multi-family housing situations in communities limited to single-family uses -- "*de facto*" rezoning situations whereby housing density is doubled in spite of the underlying zoning and with little input from the community. As noted above, over time this may have the effect of overcrowding, increased traffic, and an increasing need for parking and services. This scenario may also create disincentive to develop legitimate subdivisions with adequate services and infrastructure, but rather encourage lot-splitting and associated land speculations.

IV. Summary of Proposed Amendments to Articles 2 and 17 of the Zoning Regulations

Staff recognizes that the Zoning Regulations is a fluid document that demands regular evaluation in light of changing on-the-ground conditions, social trends or demographics. Any amendments to our Regulations, however, should be cognizant of the need to preserve the integrity of underlying zoning and maintain the overall character of communities in the County. Staff's proposed amendments are as follows:

A. Permitted Zoning Districts

Staff recommends eliminating the 10-acre, 18-acre and 36-acre minimum acreage requirements in the SM-36, 87,174 and SR-43, 87,174 zoning districts, thus permitting ALQs on 36,000 sq.-ft. lots in those zoning districts.

B. Maximum Permitted Size

Staff recommends increasing the maximum permitted ALQ size from 850 sq.-ft. to 1,100 sq.-ft. Since the vast majority of the County is zoned Rural, increasing the maximum permitted size would allow many County property owners the option of providing living quarters for those accustomed to living in a larger space, which would ease transition. Staff is also proposing to increase the maximum permitted ALQ size by 5% to 75% of the principal dwelling. This is to ensure that ALQ development remains subordinate to the principal dwelling.

C. Occupancy

In order to help protect neighborhood character, encourage better maintenance and upkeep, and reduce speculation, staff recommends language requiring a parcel owner with an ALQ to live either in the primary dwelling or the ALQ.

D. Rental

The purpose of ALQ development is to provide living quarters for the elderly and/or disabled, not to permit standard long-term rental. However, in light of recent trends towards revival of multi-generational living, standard rental post-family need may be permitted with Special Use approval.

This approach provide community oversight and seeks to strike a balance that would allow property owners to use ALQ development post-family need as a source of passive income or as a means of providing living space to other family members or friends, but at the same time allow the neighboring community to provide input on the proposed long-term rental situation. Soliciting community input is important to ensure that proposed multi-family situations are sanctioned by the community in which they are proposed, and would be an effective means of maintaining community character and minimizing the “de facto” rezoning scenario mentioned above.

In addition, staff is proposing to allow separate addresses and utility meters for those ALQs in the Rural Zoning Districts. The Special Use Permit process would provide opportunity for those property owners located in other Zoning Districts to have separate addresses and meters.

V. May 9th Planning and Zoning Commission Meeting

After Staff’s presentation, Commissioner Bemis asked Staff that if an ALQ is approved via the Special Use process and the property is sold how would the Department track that the structure would continue as an ALQ? Staff indicated that the Department currently does not track ALQ ownership changes, and would continue to do so for all ALQ development; staff suggested that ALQs approved as a Special Use would “run with the property” like any other Special Uses.

Ms. Miller asked if constructing an ALQ prior to construction of a larger home on the same site at a later time would be permitted. Staff indicated that in order to obtain an ALQ permit one must have an existing principal dwelling (or apply for permits concurrently), and that the smaller of the two structures would need to be the ALQ (in the absence of a Special Use Permit that may allow otherwise). Staff also suggested that only one ALQ per parcel would be permitted.

Mr. Martzke requested clarification on the maximum permitted size or footprint, as he had interpreted the proposed 75% of the principal structure ALQ size limitation as to allow property owners to build structures larger than the proposed 1,100 square-foot maximum. Staff indicated that the 75% maximum is calculated to determine if the ALQ would be incidental to the principal dwelling.

To illustrate:

- 75% of a 1,000 square-foot principal dwelling is 750 square-feet; under this scenario the property owner *would not* have the option of building a 1,100 square-foot ALQ, but rather, would be limited to 750 square-feet. (The current regulations would allow up to 700 square-feet).
- 75% of a 1,500 square-foot principal dwelling is 1,125 square-feet; under this scenario the property owner may construct up to a 1,100 square-foot ALQ. (The current regulations would allow up to 850 square-feet).
- In 2010, the average home size in the United States was 2,392 square-feet. 75% of a principal dwelling this size is 1,794 square-feet; under this scenario the property owner may construct up to a 1,100 square-foot ALQ. (The current regulations would allow up to 850 square-feet).

If any of the above property owners wished to construct larger ALQs than those indicated, a Special Use Permit would be required. Staff indicated that the Special Use process would serve as an oversight mechanism for communities and decision-makers.

Nobody from the public spoke on the proposed amendments. Mr. Martzke made a motion to approve as proposed. Mr. Brauchla seconded the motion. The Commission voted unanimously (7-0) to forward a recommendation of approval.

VI. Proposed Text Amendments

The following proposed amendments to Article 2 (Definitions) and Article 17 (Administration) of the Zoning Regulations are in strikethrough and boldface below:

Article 2 - Definitions

Accessory Living Quarters – An attached or detached structure that is used either as a guesthouse or as quarters for the ill, elderly or disabled, or their caretaker. Accessory living quarters must be incidental and subordinate in size, impact and purpose to a principal dwelling. **In the absence of a special use permit issued pursuant to §1715.05, the structure may be no more than ~~850~~**1,100** square feet in size, including exterior wall dimensions. In the absence of a special use permit issued pursuant to §1715.05, the structure shall be no more than ~~70%~~ **75%** of the size of the principal dwelling. The area calculation shall include all attached areas, except carports and patios, and enclosed attached garages.**

The combined square footage of a detached accessory living quarter and the total square footage of a garage attached to the accessory living quarters shall be subordinate in size to the principal dwelling. **Detached accessory living quarters are limited to one kitchen per unit.**

Except for parcels zoned Rural and in the absence of a special use permit, the accessory living quarters shall not have a separate address or separate utility meters. In the absence of a special use permit, the accessory living quarters shall not be rented separately from the main residence, nor used for commercial purposes other than a home occupation, and is not intended for sale.

There shall be no more than one accessory living quarters per lot or parcel. Recreational vehicles, other than park models, shall not be permitted as accessory living quarters in any zoning district. Manufactured homes, rehabilitated mobile homes, mobile homes with the State Office of Manufactured Housing Rehabilitation Insignia of Approval and park models may be permitted as accessory living quarters in those Zoning Districts that allow mobile homes and manufactured homes as permitted structures.

Guesthouse – Accessory living quarters that provide temporary accommodations for guests of the principal household. A guesthouse may include a kitchen but, **except for parcels zoned Rural and in the absence of a special use permit**, cannot have separate utility meters.

Kitchen - Any room principally used, intended or designed to be used for cooking or preparation of food. ~~The presence of a range or oven or utility connections suitable for servicing a range or oven shall normally be considered a kitchen.~~

1717 - Procedures for Issuing Permits for an Accessory Living Quarter

An application shall comply with the following procedures to obtain permits for accessory living quarters:

1717.01 Applications

Applications for an accessory living quarter shall include all information required for processing a building or use permit, accompanied by the fee.

1717.02 Notification of Surrounding Property Owners

Prior to issuance of a permit for the accessory living quarter, property owners within 300 feet of the subject property shall be notified by mail and given 15 days from the date of mailing of notice to file written protest with the Zoning Inspector. Notification shall include the site plan and the procedure and requirements for submitting an appeal.

The written protest shall include the name and address of the person submitting the protest and reasons why the application should not be approved. The protested application shall **may** be presented to the Planning and Zoning Commission for a decision in the same manner as is used for a Special Use Permit application, and all further actions on this application shall proceed in the manner applicable to a Special Use permit application.

1717.03 Occupancy

The owner of the parcel shall live either in the primary dwelling or accessory living quarter as their primary residence.

1717.034 Recordation of Notice

The applicant shall sign and the Zoning Inspector shall record a notice prior to the issuance of a permit for an accessory living quarters that specifically identifies the location of the property, indicates that the subject structure is an accessory living quarter, and stated that the property owner or tenant has agreed to comply with all County Zoning Regulations applicable to accessory living quarters.

1717.045 Size Modification

Applications for accessory living quarters that exceed the permitted square footage pursuant to Article 2 definition of Accessory Living Quarters ~~but are no greater than 850 square feet~~, may be submitted to the Planning and Zoning Commission through the Special Use process. Any such proposed accessory living quarters must be subordinate in size to an existing principal dwelling.

1717.06 Rental

Long-term rental of Accessory Living Quarters to the general public may be presented to the Planning and Zoning Commission for a decision in the same manner as is used for a Special Use Permit application, and all further actions on this application shall proceed in the manner applicable to a Special Use permit application.

1717.057 Legal Non-Conforming Lots

ALQs are a permitted accessory use on substandard legal, non-conforming lots in zoning districts that permit accessory living quarters subject to the applicable process.

1717.068 Action by the County Zoning Inspector

A permit for an accessory living quarter may be issued by the zoning inspector if no written protest is received or if the application has been approved by the Commission and/or Board of Supervisors.

VII. Recommendation

Staff recommends that the Board of Supervisors approve R-12-01 as proposed.